

PUBLIC HEARING ON  
BALBOA HORIZONS RECOVERY, LP  
and  
KRAMER CENTER AT NEWPORT BEACH, LLC  
BEFORE THOMAS W. ALLEN, ESQ., HEARING OFFICER  
NEWPORT BEACH, CALIFORNIA  
WEDNESDAY, DECEMBER 10, 2008

Reported by:  
LAURA A. MILLSAP, RPR  
CSR No. 9266

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7           Public hearing was taken on behalf of  
8 the City of Newport Beach at 3300 Newport Boulevard,  
9 Newport Beach, California, beginning at 4:00 p.m., and  
10 ending at 5:50 p.m., on Wednesday, December 10, 2008,  
11 before LAURA A. MILLSAP, RPR, Certified Shorthand  
12 Reporter No. 9266.  
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1 NEWPORT BEACH, CALIFORNIA; WEDNESDAY, DECEMBER 10, 2008

2 4:00 P.M. - 5:50 P.M.

3  
4 MR. ALLEN: Okay. It's 4 p.m. Again, I'm Tom  
5 Allen, the Hearing Officer designated to conduct the  
6 hearing on, first of all, the Balboa Horizons matter.  
7 Balboa Horizons was continued until today at 4 p.m. for  
8 the purpose of staff bringing back a resolution of  
9 approval containing findings supporting that decision,  
10 and adopting and incorporating conditions of approval.

11 At this point, I believe that those conditions  
12 of approval are on the board. Could we have staff please  
13 go through them and describe them for us?

14 MS. BROWN: Thank you, Mr. Allen. Janet Brown.

15 From the first set of proposed conditions that  
16 we distributed with the staff report, staff did make some  
17 changes, and we have them up here on the board. I've  
18 highlighted each of the conditions that there was a  
19 material change to from the first go-round, and I'll go  
20 ahead and just read the ones where we have changes that  
21 were made.

22 Condition number one has been changed from the  
23 previous title of "parolees" to "government referrals,"  
24 and it now states that,

25 "The Operator of Balboa Horizons,

1           hereinafter referred to as Operator, shall not  
2           provide any services to any client or house any  
3           client who last been referred or caused to be  
4           referred to the Balboa Horizons' facility by  
5           any governmental agency, including but not  
6           limited to probationers or parolees due to the  
7           limitations that Section 509.9 of the  
8           California Building Code places on Group  
9           One" -- excuse me -- "Group I and Group R  
10          occupancies."

11          There are no other changes on the first page to  
12          the conditions.

13          Then we move to condition number seven, "Quiet  
14          Hours." And we added a sentence. It's the last sentence  
15          of that paragraph that states that, "Quiet means no sound  
16          is audible beyond the parameter of the facility, except  
17          in a demonstratable emergency."

18          Condition number eight, the first portion of  
19          that was changed to read, "Operator shall adhere to the  
20          route plans for transport of its staff, residents,  
21          clients and customers. The route plans are included in  
22          the Operations and Management Plan attached as Exhibit  
23          B."

24          I did prepare an Operations and Management Plan  
25          that has a comprehensive compilation of all the items

1 that were part of the original applications submittal  
2 listed as different exhibits. So this is making  
3 reference to that plan, and this is a copy for you.

4 MR. ALLEN: Thank you.

5 MS. BROWN: I have additional copies if anybody  
6 else would like to see them. But it's the same material  
7 that was in the original staff report. No other changes  
8 on this page.

9 Going to page -- let's see -- the following  
10 page, condition number 12, we -- let's see. We added the  
11 last sentence after, "Starting after May 31, 2009,  
12 stating that any successor license offering the same  
13 treatment services." That's a completion of that one  
14 sentence. The following sentence, "Operator shall  
15 maintain ADP licensing throughout the duration of the use  
16 permit."

17 Condition number 16 was changed with the  
18 sentence replacing the last sentence, and it states,  
19 "Profanity spoken at a level heard by neighboring  
20 residents may result in administrative citation issued by  
21 the City upon the property owner and upon the operator."

22 Condition number -- let's see. Condition  
23 number 19, it had a sentence that we removed, and the  
24 sentence stated that "Operators responsible for  
25 client's" -- excuse me -- "responsible for Operator's

1 client's or resident's arrival back at their home city or  
2 state." We just removed that statement there.

3 In other words, "The Operator shall insure that  
4 any client or resident is removed from the program and  
5 has the resources necessary to get home."

6 Condition number 20, which referred to the fire  
7 clearance was removed and replaced with replacement  
8 condition number 20, which states,

9 "Federal, State and Local laws. Operator  
10 shall comply with all federal, state and Local  
11 laws. The issuance of that use permit shall  
12 not constitute a waiver of the requirements of  
13 any federal, state or local law, including  
14 requirements of the California Building Code.

15 Condition number 21 was added, "Personal  
16 Vehicles. Clients at the Balboa Horizons' facility are  
17 permitted from having their personal vehicles parked  
18 on-site or on public streets in Newport Beach for the  
19 duration of their stay at the facility."

20 Condition number 22, "Grant of Use Permit. Use  
21 Permit Number 2008-032 is granted to Balboa Horizons  
22 Recovery Services, LP, to operate an adult alcohol and/or  
23 drug abuse recovery treatment facility for females only.  
24 And all clients of the facility shall be classified as  
25 disabled as that term is defined by Federal and State

1 Fair Housing laws.

2 Condition number 23,

3 "Compliance with Conditions of Approval.

4 Any changes in operational characteristics  
5 including, but not limited to, the following  
6 shall require an amendment to this use permit  
7 or the issuance of a new use permit:

8 "Item A, Modification. Expiration without  
9 renewal or loss of the ADP license.

10 "Item B, Increase in number of resident  
11 clients.

12 "Item C, Increase of off-site -- excuse  
13 me -- on-site staffing.

14 "Item D, Increase of physical capacity of  
15 facility, including number of beds, number of  
16 bedrooms, floor area facility, et cetera.

17 "Item E, Change in operational programs  
18 and/or standards.

19 "Item F, Requests for amendment to any  
20 condition or conditions of approval.

21 "Item G, A change in the property ownership  
22 in a manner that causes the majority of the  
23 property to be owned by a person or entity not  
24 identified in the use permit or its  
25 application.

1           "Item H, Alternation and/or loss of approved  
2 on-site parking.

3           "Item I, Upon determination by the City's  
4 Planning Director, a change in facility  
5 management, a change in facility ownership, or  
6 a change in the population served by this  
7 facility.

8           "Item J" states, "Any other material change  
9 in the operational characteristics that is not  
10 in substantial conformance with the Operations  
11 and Management Plan, Exhibit B, upon the  
12 termination by the City's Planning Director."

13           And the last condition added is "Additions or  
14 modifications to conditions of approval or revocation of  
15 use permit."

16           "The Hearing Officer or City Council may add  
17 or modify conditions of approval of this use  
18 permit -- excuse me -- to this use permit or  
19 revoke this use permit upon a finding of  
20 failure to comply with the conditions set  
21 forth.

22           "City Council may also revoke, modify or  
23 amend this use permit if it determines that  
24 conditions under which this facility is being  
25 operated or maintained are detrimental to the

1 public health, safety, peace, morals, comfort,  
2 or general welfare of the community, or if the  
3 facility is materially injurious to property or  
4 improvements in the vicinity, or if the  
5 facility is operated or maintained so as to  
6 constitute a public nuisance.

7 "Any proceeding should revoke this use  
8 permit" -- excuse me. "In any proceeding to  
9 revoke this use permit, the cumulative effect  
10 of violations of two or more conditions shall  
11 be considered."

12 And that concludes the conditions of approval.

13 MR. ALLEN: A relatively small item. With  
14 respect to 23-E, an amendment to the permit would be  
15 required in the event there was a change in operation of  
16 program and/or standards.

17 And I apologize for not bringing this up  
18 before, but is that the equivalent or is "Operational  
19 Program and/or Standards" equivalent to the "Operations  
20 and Management Plan," or is it broader than that.

21 MS. BROWN: It's duplicative.

22 MR. ALLEN: Okay. We probably ought to say  
23 "Operations and Management Plan." That would be --

24 MS. BROWN: We can strike E or just change the  
25 wording.

1 MR. ALLEN: I think change the wording, because  
2 I think it's worth having in there. It's currently one  
3 of the essence of this attempt at maintaining control and  
4 ability to operate the facility responsibly.

5 I don't have any other comments with respect to  
6 these conditions. I think that they do the job.

7 Has the Applicant had the opportunity to go  
8 through these?

9 MR. HANCK: We have. We've gone through and --

10 MR. ALLEN: Maybe could you come up and go on  
11 the record with your name and --

12 MR. HANCK: I apologize. Bill Hanck, general  
13 partner. Nice to see you again.

14 So we have had the opportunity to review the  
15 documents and obviously not with some of the additions  
16 that were made. I believe those additions were made  
17 after the document was sent to us last night.

18 Is that right, Janet?

19 MS. BROWN: Yes.

20 MR. ALLEN: Okay.

21 MR. HANCK: So there were a couple of concerns.  
22 And, of course, the gist of most of this again falls well  
23 within what we have been doing, how we've been operating  
24 the facility since we've opened it. So there are, of  
25 course, no concerns or issues with the majority -- the

1 vast majority of these conditions.

2 The primary concern we have is that we're not  
3 held to an undue amount of restriction or freedom from  
4 operating the business in ways that other businesses now  
5 in that area would not be subject to similarly.

6 So quiet times, things of that nature, what we  
7 want to be able to do is obviously work within our  
8 program. Our program at this point is lights out at 11  
9 o'clock in the evening.

10 So an 10 o'clock quiet time versus an 11  
11 o'clock quiet time, being able to -- actually making that  
12 change would potentially put us right into a violation of  
13 E or J, or whatever that was in one of the conditions  
14 that would require us to get an amendment to the  
15 conditional use.

16 So what we're looking at, again, is being able  
17 to operate here within the bounds of what is doable and  
18 normal with what we're already doing without triggering a  
19 change in the conditions that are being set forth.

20 Similarly, one of the items that we brought up  
21 last week is that currently we don't have our clients  
22 bringing their automobiles down to the facility. But we  
23 do this because our therapists tell us that, at this  
24 stage of the game, the standard of care, in addition to  
25 therapy, requires that these people are under our

1 control, and that we control when and where they are  
2 going and how they are going to get there.

3 But if, indeed, standards of care change in  
4 therapy -- in addiction therapy in that cars are now  
5 considered part of how people are integrated into their  
6 mainstream daily behavior, and therapeutically this  
7 becomes something that our doctors are recommending for  
8 our clients, that would, again, potentially trigger a  
9 change here.

10 And what we'd like to be able to do is maintain  
11 some flexibility, such that if, indeed, this becomes an  
12 issue down the road, it does not put us back into a  
13 public hearing and having to apply for and go through  
14 this process.

15 And so, we did bring that to the attention of  
16 the City so that we might be able to find a way to  
17 potentially have an automobile or two if, indeed, that  
18 becomes a requirement or a recommendation from our  
19 therapists as these people are staying in our facility.

20 And that would be, again, another point that  
21 we'd like to bring up and put on the table and find away  
22 to work through without their being a major change to  
23 what has been put forth here. I'd like to make that an  
24 amendment if we can or change that amendment.

25 So other than those, I don't see any other

1 issues up here. Because again, they fall within the  
2 bounds of how we've been operating the business all  
3 along.

4 MR. ALLEN: Well, the way I read this right  
5 now, it's ready ridged with respect to both of those  
6 issues, the cars and the quiet hours.

7 MR. HANCK: Sure.

8 MR. ALLEN: So -- and it appears to me from the  
9 text of this resolution that it would require a new  
10 public hearing to change those.

11 MR. HANCK: And currently, again, we have an 11  
12 o'clock lights out policy. So to change that to a 10  
13 o'clock lights out policy would seem to be already  
14 changing one of our operational characteristics.

15 MR. ALLEN: You could leave the lights on all  
16 night, but you just can't let the sound emanate out  
17 beyond the perimeter of the property, I think, right? I  
18 mean, this certainly wouldn't mean everybody goes to bed  
19 and nobody whispers. But on the other hand, that the  
20 sound wouldn't go on outside the perimeter.

21 MR. HANCK: Understood. There seems to be a  
22 fair amount of rigidity there. And what you have to  
23 understand is that we have human beings that are living  
24 in the property.

25 So what we would like to be able to do is, I

1 guess, note the fact that, while we do have this standard  
2 in place already, I guess that flexibility of knowing  
3 that if, indeed, there is a sound made that goes outside  
4 of the perimeter of the building, that we're not going to  
5 be somehow, you know, in violation.

6 Because, of course, we endeavor to control that  
7 along the way all the time, but we do know that we're  
8 dealing with human beings and variables here. So, in  
9 essence, what we're saying is we understand the letter of  
10 the law here, and we'll do our best to comply with these  
11 things.

12 But in the event we are in violation somewhere  
13 along the way, what we don't want this to do is trigger a  
14 cascade of activity and admittedly negative activity to  
15 follow.

16 So how is it that we deal with this now up  
17 front so that we're not back in front of each other in a  
18 year or six months in the event, again, some of these  
19 changes need to be made?

20 MR. ALLEN: Mr. Kiff has a suggestion,  
21 possibly?

22 MR. KIFF: Thanks, Mr. Allen.

23 And Bill, the way the City would enforce this  
24 would be if -- usually on a complaint basis. If someone  
25 complained, "Hey, there's a lot of noise coming from this

1 facility. It's after 10 o'clock," it doesn't mean you're  
2 subject to a revocation hearing. We would deal with that  
3 like we deal with any use permit violation. Initially  
4 it's a notice of violation, then an administrative  
5 citation process with fines.

6 So if your concern is that one noise would  
7 immediately cause you to come before the City Council for  
8 revocation, that should not be a concern.

9 However, I did want to make sure it was clear  
10 that, as Mr. Allen is saying, that we're not asking  
11 lights out to start at 10 o'clock here. We're asking  
12 that the building be quiet at 10 o'clock. And then if  
13 folks are listening to music, they listen to it on their  
14 headphones or whatever.

15 Is that something you're struggling with, or am  
16 I missing the point?

17 MR. HANCK: No. It's -- I guess that the  
18 concern we have, again, is that if, indeed, there were to  
19 be some noises along the way, that there wouldn't be  
20 these severe draconian consequences.

21 Because again, come 10 o'clock, folks are  
22 typically inside and watching TV or reading or writing  
23 their reports or doing the things that they do. They are  
24 not out walking around. They are not sitting on patios.  
25 They are not, you know, milling or congregating out in

1 front of the facility anyhow.

2 So, my concern, again, is that if there are  
3 some noises along the way, that somehow that doesn't,  
4 again, trigger this domino effect of having to go through  
5 and participate in this process.

6 MR. KIFF: As much as you have enjoyed this  
7 process?

8 MR. HANCK: Exactly.

9 MR. KIFF: Clearly the intent here is to  
10 enforce all of our use permits just like we do  
11 consistently across the City, and that does allow you,  
12 again, a notice of violation, which is not associated  
13 with any fine, and then -- potentially if it's a problem,  
14 then we start to fine.

15 We're fairly reasonable on that. We have five  
16 code enforcement officers. They are not everywhere at  
17 all times, so we enforce based on complaints.

18 MR. HANCK: Okay. All right. And then I think  
19 the final issue is, again --

20 MR. KIFF: The parking?

21 MR. HANCK: -- the parking issue. So if we  
22 were to put ourselves up again and lose our conditional  
23 use permit and go to rental, where we're renting the  
24 bedrooms out to weekly renters or monthly renters, or  
25 whatever the case may be, we know that those people would

1 have cars and be using many more spaces that are  
2 currently being used by the folks at our facility.

3 So I put that up as a comparison against what  
4 we have now, which is essentially zero, except for the  
5 cars that are run by the staff.

6 In the event we have this therapeutic  
7 recommendation being made where, you know, a car might be  
8 used by a client, because they are advanced enough in  
9 their recovery, and they are trying to be integrated back  
10 into their daily lives, and an automobile to and from  
11 work or to and from the counselor, whatever the case may  
12 be, becomes a therapeutic recommendation of this  
13 particular individual, that would obviously put us in  
14 violation as well. And that's another concern here, that  
15 we want to follow this to the letter here and not be in  
16 violation.

17 So, would we have the flexibility of having two  
18 or three, or one or two, or three or four, whatever the  
19 number is, vehicles, were that to be a recommendation,  
20 allowed within the terms of this conditional use permit?

21 MR. KIFF: Well, it would be as the letter of  
22 the condition as set forth, as Mr. Allen's pointing out.  
23 So maybe we should discuss whether or not a number is  
24 appropriate.

25 And as you point out, if someone were renting

1 each of those apartments potentially with two adults in  
2 each, you could have potentially three cars on-site,  
3 three cars off-site. I would propose limiting your  
4 off-site parking to two. If you were amenable to that,  
5 to me, that sounds like a reasonable approach.

6 So again, if you had 11 clients, only two of  
7 them could have cars -- two of them could have a single  
8 car apiece.

9 MR. HANCK: And the number that was proposed by  
10 my staff was potentially four. So, would we be able to  
11 split that difference potentially? Maybe three? Would  
12 that be acceptable?

13 MR. KIFF: I think going from zero to two at  
14 least is easier for me to defend than going from zero to  
15 three, but --

16 Janet is discussing whether there could be a  
17 different limitation during the summer months versus the  
18 off-season, because summer is frequently when he have  
19 more parking problems.

20 Mr. Allen, do you have any advice for us?  
21 Ultimately this is something that you'll approve, but --

22 MR. ALLEN: Well, I thought that at the last  
23 hearing, there was agreement from the Applicant that  
24 there wouldn't be any personal vehicles, and so the  
25 resolution and conditions were written up that way.

1           Condition 21 prohibits them from having  
2 personal vehicles parked on-site or on public streets.  
3 So we're going to have to modify my condition in some  
4 respect if that would be the case, because it's rigid.  
5 It just says no, and --

6           MR. HANCK: I'd like to be clear here. I'm not  
7 attempting to wrestle this from what had been considered  
8 an agreed-upon condition. Because at this stage of the  
9 game, we do not allow our clients to bring their  
10 automobiles to the facility.

11           But it was pointed out to me that if this is a  
12 condition that's not imposed upon other treatment  
13 facilities, if this is something that is being  
14 potentially integrated into a future therapeutic  
15 methodology, modalities, that we then would potentially  
16 have to come back. So why not potentially deal with it  
17 now and allow ourselves a little bit of flexibility  
18 there?

19           So that was pointed out to me, as I was talking  
20 to the counselors about this process, and that -- looking  
21 forward and limiting the amount of time that I would  
22 spend back in front of this Council.

23           And in order to effect that change, were it to  
24 come to pass, it may very well not, but with 11 people in  
25 the facility, and two or three spots, four spots, was

1 what they -- again, they had recommended, that would be  
2 roughly a third or so of the folks that were there.  
3 Again, far fewer than if we were to be renting the place  
4 to renters who were not falling under the ADA.

5 MR. KIFF: A couple more thoughts. So Bill,  
6 your staff fills up the three on-site park spaces?

7 Mr. HANCK: No. It's usually one or two spots  
8 that are being filled up.

9 MR. KIFF: So there are potentially an  
10 opportunity for someone to park on-site. I think the  
11 biggest concern that the City would have is on the public  
12 streets.

13 You raised a little different issue there about  
14 whether or not we're -- this condition restricts you  
15 competitively amongst other applicants. I think -- I  
16 would be able -- willing to consider a concept to  
17 recommend to Mr. Allen, whereby if we did give someone a  
18 more preferable parking standard in another condition,  
19 that that would cause to us revisit your own to not  
20 disadvantage you.

21 MR. HANCK: Great.

22 MR. KIFF: So that seems to me an appropriate  
23 remedy that arguably you could leave the condition as is  
24 and at least allow or -- sorry -- we could modify the  
25 condition so that a client could use the on-site spaces

1 that were available, and -- that would be one aspect of  
2 the modification.

3 And a second one would be, if the City were to  
4 grant a more preferable parking -- on-street parking  
5 opportunity to another operator, that we would have to  
6 revisit that with you and give you a similar preferable  
7 parking opportunity. How does that sound?

8 MR. HANCK: That's sounds good. And so we'd  
9 eliminate the two slots and move to on-site parking  
10 exclusively as the --

11 MR. KIFF: On-site, unless --

12 MR. HANCK: Again --

13 MR. KIFF: -- unless --

14 MR. HANCK: -- someone gets more  
15 preferential --

16 MR. KIFF: Just to be clear, though, it doesn't  
17 mean the staff would be pushed on to the street. You  
18 would have to accommodate clients and staff in your three  
19 spaces.

20 MR. HANCK: Um-hum.

21 MR. KIFF: And then if you -- if the City gave  
22 someone else, another operator, a more preferable parking  
23 opportunity, we would modify yours to accommodate that  
24 same change.

25 MR. HANCK: Okay. So the point was brought up

1 that we're not competing just locally here in Newport  
2 Beach, but obviously nation-wide against other operators  
3 that operate outside of Newport Beach. And then  
4 that -- that condition, obviously, wouldn't be imposed  
5 upon those folks as well. So he points that out, Paul,  
6 who is our other general partner here. So, you know --

7 MR. KIFF: Indeed, we can't control, obviously,  
8 what over folks may do.

9 MR. HANCK: Right.

10 MR. KIFF: We're just trying to --

11 MR. HANCK: -- be accommodating, right.

12 MR. MOEN: It could hurt our business.

13 MR. KIFF: Again, I guess I would offer this  
14 back to you, Mr. Allen, if you had an alternative  
15 proposal. To me, we're fairly close there.

16 MR. ALLEN: No. I think that your suggestion  
17 works. The downside is that you're creating more  
18 enforcement issues for the City and more observation  
19 issues for the surrounding neighbors who get upset with  
20 the operation to fight over. I hate to use that word,  
21 but that's how these happen.

22 And nevertheless, that condition would be  
23 acceptable to me. If staff is recommending that and the  
24 Applicant agrees with it, I agree with it.

25 MR. HANCK: Would we be able to consider the

1 opportunity of using one on-site and two street as an  
2 acceptable alternative, with a -- perhaps a requirement  
3 to feed back to you if we indeed are utilizing that, to  
4 give you that heads-up and allow you the opportunity to  
5 know whether or not we're taking advantage of that?

6 So that way we're not -- you wouldn't have to  
7 guess whether or not we're utilizing or not, and putting  
8 people in a position of having to observe or somehow  
9 track this. We would actually go back to the City and  
10 say, "Well, we're utilizing that provision in our use  
11 permit."

12 MR. KIFF: So one on-site and two on-street,  
13 and then the staff would be restricted to on-site?

14 MR. HANCK: On-site, which we're parking in the  
15 carport.

16 MR. KIFF: I think that's consistent with what  
17 I discussed, adding two on-street spaces.

18 So I would be prepared to make that  
19 recommendation to you, Mr. Allen.

20 MR. ALLEN: All right. Is there any other  
21 issue that needs to be clarified?

22 MR. HANCK: I think at this stage of the game,  
23 there's, again, a couple of questions that we had along  
24 the way. But I think by and large, based, again, on some  
25 of the back-and-forths and discussions that we've had

1 along the way, we find these conditions to be amenable  
2 and acceptable and conditions that we can continue to  
3 offer the best care to our clientele and be the best  
4 neighbors that we can to our neighborhood.

5 Mr. Moen is one of the general partners.

6 MR. MOEN: Hi.

7 MR. HANCK: Paul Moen is one of the partners.

8 MR. ALLEN: Did you get the name spelling?

9 THE REPORTER: No, I didn't.

10 MR. ALLEN: Would you please spell the name?

11 MR. MOEN: M-o-e-n is my last name.

12 MR. ALLEN: Thank you.

13 MR. MOEN: I had just one question under  
14 management of the facility and how it's set up now.  
15 Right now, we are a gender-specific program limited only  
16 to women.

17 Again, if in the future, because of -- whatever  
18 could happen, demographics in the nation, or whatever, we  
19 wanted to switch it to men, or co-ed, or whatever it was,  
20 what process would go on? Would we come again in front  
21 of you for a conditional use permit? Or is that  
22 something so little in there that that would just be  
23 between us and ADP?

24 MR. KIFF: Mr. Allen -- no. That would be a  
25 significant change that would require you to amend your

1 ADP license. And because this is based on your current  
2 ADP license, you would have to also come back and amend  
3 the use permit, and that would involve a public hearing,  
4 such as this one.

5 MR. MOEN: Okay. And do you guys feel that  
6 there's any difference between men and women in recovery  
7 and the impact it could be on a Newport beach?

8 MR. KIFF: I don't believe any of us are  
9 qualified to state that. Obviously, ADP believes that  
10 there is, because they licensed them differently.

11 MR. MOEN: With us, we just could change a  
12 sentence with ADP. It's pretty easy to do men or  
13 women.

14 MR. KIFF: Understood. But ADP does put you  
15 through a process for that, and our process would be an  
16 amendment of the use permit.

17 MR. MOEN: Okay. So I guess, you know, that's  
18 the other problem we have is agreeing to something that  
19 might be unreasonable to expect of a business.

20 MR. KIFF: I don't mean to be argumentative,  
21 but I don't think that's an unreasonable request to  
22 return and get an amendment to this use permit when  
23 you're changing the clients. So I'm going push back  
24 fairly hard from that from the City's perspective.

25 MR. MOEN: How do you feel about that?

1 MR. ALLEN: Well, I think Mr. Kiff's point is  
2 well taken with respect to the ADP license. And if  
3 you're saying that's a simple matter to do quickly, then  
4 that makes it easier for you.

5 But without making reference to differences  
6 between gender, the matter was considered and the public  
7 hearing was held with the existing ADP license as -- with  
8 that condition in it. And I think the public relied on  
9 that in making their comments. And if it needs to come  
10 back, if you do need to change it, then I think it's  
11 appropriate to have it come back.

12 MR. MOEN: Okay. And if you remember the  
13 comments that day were -- that the public actually said,  
14 "I don't know why you guys keep bringing up gender, women  
15 or men. It has nothing to do with what we're talking  
16 about." They actually brought that up that day.

17 MR. ALLEN: They may have, but I don't recall  
18 that comment. But I'm sure there were others to the  
19 contrary as well. And again, it's very difficult for  
20 government to become involved in debating the difference  
21 between gender and making it gender specific.

22 But the fact is, your ADP license is set up  
23 that way. That's how you hold yourself out as doing  
24 business, and that was, I believe, relied upon by the  
25 staff and commenting public. And I think you're bound by

1 that for the time being.

2 MR. KIFF: In addition, Mr. Allen, also  
3 remember that the City is attempting, through this  
4 ordinance, to address an overconcentration and, at the  
5 same time, trying to ensure that we have adequate  
6 facilities suitable to our need that reflect the diverse  
7 clients of folks who can be in recovery.

8 I think it's important that this facility is  
9 oriented towards women in that we have very few  
10 facilities that are women only. And as such, it would be  
11 a concern that that client base was lost in our  
12 community. Because we're considering this use permit  
13 based on -- in part on the value it brings to people in  
14 recovery, including members of our own community would  
15 may need that recovery who are women.

16 MR. MOEN: I guess that was my next question.  
17 I wanted to hear how you came about that decision and  
18 what was behind that.

19 MR. HANCK: Just so you know, again, the issue  
20 really isn't about the men versus women, per se. It's as  
21 we see very tumultuous times on the horizon, we're indeed  
22 in very tumultuous times, economic times, that Paul is  
23 addressing the ability to remain flexible and to do for  
24 our business as it needs to be done.

25 So understand that this is not meant to suggest

1 that we're going to be making a change. It's how we do  
2 this and the process through which those changes are  
3 made. That's the motivation for the line of  
4 questioning.

5 MR. KIFF: Understood. And this would set  
6 forth that process. If you decided to make that change,  
7 it would be an amendment to the use permit.

8 MR. HANCK: Understood. Okay. So with that  
9 said, I believe we're done stating our questions and  
10 concerns back to you.

11 MR. ALLEN: Okay. Thank you.

12 MR. HANCK: Thank you.

13 MR. ALLEN: Then unless staff has comments  
14 further about the conditions, and with the understanding  
15 that we're going to revise the one condition with respect  
16 to personal automobiles, the content and number of the  
17 conditions is now concluded.

18 MR. KIFF: I do have one comment that's been  
19 offered by our City Attorney, Mr. Allen. As we develop  
20 the findings portion of the resolution, one of the  
21 findings that we would include is that the facility  
22 provides housing for disabled individuals. I think  
23 that's a fairly clear one and easy to comply with.

24 And the second one relates to the rest of the  
25 City's ordinances regarding boarding houses. And it

1 would say that, "The residents in that facility are not  
2 living together as a single housekeeping unit as defined  
3 by our Code." That shouldn't effect in any way the  
4 operations of Balboa Horizons, but it does allow us to  
5 continue to enforce our restrictions on boarding houses.

6 And then finally, as a potential condition, the  
7 City Attorney recommended that the operator provide  
8 affidavits stating that all residents are disabled. And  
9 affidavit is not as necessary as some other form of  
10 proof, like a doctor's diagnosis with a prophylactic  
11 redactions, so that we can, again, comply with the  
12 concept we had in the ordinance, that this is housing  
13 opportunities for persons with disabilities.

14 MR. ALLEN: So would there be an proposal that  
15 the conditions be amended to require those affidavits?

16 MR. KIFF: We could do that a couple of ways.  
17 That could be within the Operation and Management Plan,  
18 so it could be an amendment to that plan that those be  
19 provided. Obviously, again, there's privacy issues there  
20 with those names.

21 And Janet is suggesting maybe adding it to  
22 number 22, which speaks to the fact that those folks are  
23 classified as disabled.

24 Do you have any thoughts, Bill?

25 MR. HANCK: Yeah. I was going to recommend

1 that due to HIPPA regulations, and so forth, and the  
2 extreme levels of privacy involved, I think it would be a  
3 challenge for affidavits to be provided through each  
4 individual client of ours; however, all the general  
5 partners would be willing to sign an affidavit that we  
6 are providing this treatment in this facility exclusively  
7 for folks with disabilities.

8 MR. KIFF: That would be acceptable to me.

9 MR. ALLEN: Is that an acceptable alternative  
10 to requiring each client to sign an affidavit they are  
11 disabled?

12 MR. KIFF: Yes. It's not necessarily the  
13 client that needs to sign it. It's someone needs to sign  
14 on the dotted line that they are treating only disabled  
15 persons in that facility. And it's appropriate that the  
16 general managers or general partners do that.

17 MR. ALLEN: That certainly sounds more  
18 appropriate than attempting to get affidavits signed by  
19 all the clients.

20 All right. I had -- I had requested the  
21 opportunity not to spend any more time as the Hearing  
22 Officer on the conditions of approval, but to spend just  
23 a short amount of my time to finalize the findings to be  
24 satisfactory from my point of view. I have not been able  
25 to do that because of the timing issues that occurred

1 here with regard to the preparation and distribution.

2 And so, I'm going to request that we continue  
3 this matter only for the purpose of any revisions to the  
4 findings themselves and not to the conditions or the plan  
5 of operation and management of the facility. I simply am  
6 asking for my opportunity to take some time to make any  
7 recommendations and requirements for additions to the  
8 findings that I see necessary.

9 And so if it is workable for staff still, then  
10 we have tentatively discussed continuing this matter to a  
11 very short meeting a week from today, which would be  
12 December 17th.

13 And again, unless staff disagrees, and I think  
14 this is just more important for the audience and the  
15 Applicant, that there would be no discussion regarding  
16 operational conditions or any changes made in that  
17 respect that would affect a person who was concerned over  
18 the management plan and operation.

19 MR. KIFF: I believe we've addressed all the  
20 operations and management issues, so we could agree that  
21 that would only be for the formal adoption and  
22 resolution.

23 MR. ALLEN: So inasmuch as I'm the only one  
24 that votes here, I'm going to make a determination that  
25 we continue this matter until Wednesday, December 17th,

1 at 4 p.m.

2 Does that make sense time-wise for the final  
3 adoption of this resolution? And, of course, anyone is  
4 welcome to -- it will be a public meeting, and anyone is  
5 welcome to appear, but we will not further discuss the  
6 operational conditions.

7 I guess, come to think of it, there is going to  
8 be the one condition come back that I believe we made  
9 clear agreement on with respect to automobile parking.  
10 And so as long as that's clearly drafted so that it  
11 works, and you may have the opportunity discuss it with  
12 the Applicant prior to that date, that would be the only  
13 change, and whatever findings I need to do.

14 MR. KIFF: Okay. I also was typing it as we  
15 were speaking, so it's up on the board, and maybe the  
16 Applicant and I can agree with that to submit that. And  
17 again, understand, we're going to bring it back on  
18 Wednesday for a short adoption.

19 MR. ALLEN: All right. Then that finalizes  
20 Balboa Horizons for tonight. It's continued to the 17th.

21 MR. KIFF: Does it work with your schedule?

22 MR. HANCK: Great.

23 MR. KIFF: Okay.

24 MR. HANCK: Thanks, guys.

25 MR. ALLEN: Thank you.

1 MR. HANCK: Thank you very much.

2 MR. ALLEN: Next on our agenda is the Kramer  
3 Center matter.

4 Are Applicants here from the Kramer Center  
5 matter? Representatives from Kramer Center?

6 MS. REP: Right here, sorry.

7 THE COURT: We're just going to commence the  
8 hearing on the Kramer Center matter.

9 My name -- just for your benefit, my name is  
10 Thomas W. Allen. I've been assigned by the City to  
11 conduct the hearing as a Hearing Officer for your  
12 application.

13 I've noticed in our matters and mentioned once  
14 again that I may retired city attorney. I'm no longer  
15 the city attorney anywhere. I am a Hearing Officer  
16 contract by the City, I'm not employed by the City in any  
17 other capacity, and I'm not involved in your business in  
18 any capacity.

19 And with that, unless there's any preliminary  
20 motions or concerns, let's commence the staff report on  
21 this matter.

22 MR. KIFF: Thank you, Mr. Allen.

23 This is Agenda Item 2. This is a proposed use  
24 permit for the Kramer Center at Newport Beach, LLC. I  
25 apologize for those of you who have sat in these hearings

1 before, but I do think it's important to clarify how this  
2 works.

3 We'll have this brief presentation by me, then  
4 Janet Brown will present the specifics of the Kramer  
5 Center's application. The Applicant can come up and make  
6 comments, if she has any. There are no time limits on  
7 the Applicant's comments. The public hearing is then  
8 open. Anyone from the public can come up and speak.  
9 Please do leave your name and spell your last name for  
10 the Court Reporter.

11 Comments here are limited to three minutes per  
12 person, unless the Hearing Officer determines otherwise.  
13 Then the Hearing Officer can close the public hearing.

14 The Applicant can return to rebut or clarify  
15 comments made, and then it's a question-and-answer time  
16 potentially to the Applicant from the Hearing Officer or  
17 from the City staff.

18 Then the Hearing Officer can make one of three  
19 determinations: To approve with conditions, to deny, or  
20 to continue the hearing to a date certain.

21 So as additional background, this is a use  
22 permit hearing held under the Newport Beach Municipal  
23 Code, Chapter 20.91(a), Use Permits in Residential  
24 Districts. The ordinance that created this chapter calls  
25 out the following process:

1           Most existing group residential uses had to  
2     apply for a permit by May 22, 2008. The Kramer Center of  
3     Newport Beach did submit an application before May 22nd,  
4     2008. That's why they are here.

5           The Hearing Officer can make a determination to  
6     approve or deny the permit. The Hearing Officer's  
7     decision can be appealed to the City Council. The City  
8     Council's decision may not be appealed, but reasonable  
9     accommodation may be requested. Reasonable accommodation  
10    request go before a Hearing Officer, just like this same  
11    hearing, and can be appealed to the City Council as well.

12           I'd like to point out the neighborhood around  
13    the Kramer Center's application. This is now  
14    we're -- the previous hearing was Balboa Horizons further  
15    down on the peninsula. To ground us here, this is  
16    Newport Pier. This is Newport Boulevard. This is Lido  
17    Peninsula. So the Kramer Center's facility is here at  
18    207 28th Street.

19           There are a few other facilities around. Far  
20    down in the corner is Narconon on the same map. That's a  
21    49-bed facility that is closing at the end of February of  
22    2010. There are two Sober Living by the Sea facilities  
23    with up to 10 beds apiece. That one is here -- the one  
24    of them is here. One of them is here. This is 34th  
25    Street and this is 29th Street.

1           Sober Living by the Sea's offices are here at  
2 2811 Villa Way. There is a use -- a group residential  
3 use that is under an abatement order here that did not  
4 apply for a use permit. Anyone else that's on this map  
5 is one that didn't apply and would be subject to  
6 abatement as well.

7           Now arguably, they could also apply for  
8 reasonable accommodations to try to stay, but these are  
9 all the use -- sorry -- group residential uses in this  
10 neighborhood that either have applied for a use permit or  
11 do not need to.

12           The Sober Living facilities, the green dots,  
13 are ones that are addressed in the City's proposed  
14 settlement with Sober Living by the Sea, which comes  
15 before the City Council in January.

16           A closer shot at the overhead of the facility  
17 of 207 28th Street, the Kramer Center facility, and then  
18 I'm going to have Janet continue with the specifics of  
19 the application.

20           MS. BROWN: Thank you.

21           Yes, this use permit application was submitted  
22 by the Kramer Center at Newport Beach on May 20th. And  
23 they are requesting approval to allow the continued  
24 operation of an existing unlicensed adult residential  
25 Sober Living facility with a total capacity of 12

1 persons.

2           The property is developed with the two-unit  
3 building, and it is owned by KCNB Realty, and  
4 Ms. Michelle Berner manages the facility.

5           Kramer Center is licensed to provide  
6 out-patient alcohol and drug recovery treatment services  
7 at a different location located at 3388 Via Lido. This  
8 is in a commercial office location.

9           The facility on 28th Street -- the people  
10 that -- persons at the 28th Street facility take their  
11 treatment at the Via Lido location. The 28th Street  
12 facility was established in December of 2006, and it,  
13 again as I stated, is not licensed by the ADP.

14           I'd like to provide just a little bit of  
15 background that's contained in the staff report, and I'll  
16 try to keep it brief.

17           In November 2006, the operator submitted an  
18 application for a license from the Department of Social  
19 Services to house approximately 10 to 12 adolescents  
20 between the ages of 14 and 17 at the 207 28th Street  
21 location. The operator also applied for a ADP license to  
22 provide residential drug and alcohol recovery treatments  
23 at the same site.

24           In late December 2006, prior to obtaining  
25 either of the required State licenses, the operator moved

1 approximately five minor female clients into the  
2 facility. Both the DSS and ADP subsequently investigated  
3 the operator, and both State licensing agencies issued  
4 fines and administrative citations to Kramer Center for  
5 violations of State law relating to operating unlicensed  
6 and advertising as a licensed facility.

7 In January 2007, DSS issued a licensed to  
8 Kramer Center to house six adolescents in one unit of the  
9 duplex. The Kramer Center has never received a  
10 treatment -- a residential treatment license from ADP.

11 Ms. Burner has communicated with City staff on  
12 a number of occasions between November of 2006 and July  
13 2008 regarding the use of the Via Lido facility as well  
14 as the 28th Street facility, as is outlined in the staff  
15 report.

16 To the best of the City's knowledge, the owner  
17 and operator do not own or operate any other similar  
18 residential facility in the City of Newport Beach or the  
19 State of California.

20 With the exception of the State law violations  
21 from 2006 and 2007, the only known code violations the  
22 City is aware of is with respect to a fire safety  
23 violation that was cleared by reinspection in 2008.

24 As far as the status of the application, the  
25 use of the project site is subject to abatement by

1 February of 2009, pursuant to the ordinance if this use  
2 permit is not yet approved.

3 We're scheduling this hearing in order to  
4 provide the Applicant with an opportunity to gain  
5 approval of a use permit prior to that February date. By  
6 scheduling this application, we are not stating that the  
7 application is complete.

8 And we noted to Kramer Center on more than one  
9 occasion that after the initial submittal in May, that  
10 the application was incomplete by giving them a Notice of  
11 Incomplete letter. The first letter was dated June 16,  
12 2008.

13 The City sent a follow-up letter in August of  
14 '08 stating that failure to obtain a use permit for the  
15 residential use of the property would render the use  
16 non-conforming, and the use would be subject to abatement  
17 by February of 2009.

18 In that letter, we also requested the required  
19 application materials described in the first Notice of  
20 Incomplete, and that they be submitted by September 2,  
21 2008, to allow adequate time for hearings.

22 On September 16th, staff received some  
23 additional information in response to our request. After  
24 reviewing the items submitted on September 16th, a second  
25 Notice of Incomplete application was sent, dated October

1 15th, describing the materials that were still  
2 outstanding.

3 Staff then scheduled a meeting with the  
4 Applicant on October 31st to go over the requested  
5 outstanding materials and answer any questions that the  
6 Applicant might have. In response to that meeting, the  
7 Applicant submitted additional items on November 21st,  
8 including the required application fee.

9 All of the items had been submitted to date are  
10 attached to the staff report for reference. The  
11 remaining items that are needed in order to deem the  
12 application complete are as follows:

13 A current preliminary title report verifying  
14 the legal property owner and any restrictions that may be  
15 recorded against the property;

16 A site plan that clearly shows the lot  
17 dimensions of the parcel;

18 A route map for the facility van's travel to  
19 off-site locations;

20 A floor plan that accurately depicts the garage  
21 area in relation to the first floor living area;

22 A written statement that this is the only  
23 facility operated by the Applicant, or, if there is more  
24 than one facility, evidence should be submitted to state  
25 the needs of residents of Newport Beach for the capacity

1 of the subject facility;

2 And then finally, we would like them to clarify  
3 activities and counseling that's on-site.

4 The application states that they do hold AA  
5 meetings on-site; however, in their November 21st written  
6 response, it states that they are only held at the Via  
7 Lido location.

8 Each of these items are -- the remaining items  
9 to be submitted are typical submittal requirements of any  
10 use permit application and are not difficult to prepare  
11 or secure submittal.

12 Because of the incomplete status of the  
13 application, we're unable to prepare an analysis for the  
14 project as proposed. But we wanted to provide this  
15 report for the Hearing Officer to give the project  
16 background and the status of the application in case the  
17 Hearing Officer determines that action can be taken at  
18 this time.

19 Staff is recommending that the Hearing Officer  
20 continue this public hearing to a date certain and  
21 request that you would direct the Applicant to provide  
22 all required materials to the City of Newport Beach  
23 Planning Department no later than 21 days prior to the  
24 scheduled public hearing.

25 This should provide the Applicant adequate

1 time -- excuse me. This should provide the Applicant  
2 adequate time to secure the remaining submittal items and  
3 submit them to the City. And that concludes my  
4 presentation.

5 MR. ALLEN: Any other comments from staff that  
6 this point?

7 So would the Applicant please come forward and  
8 identify herself for the record?

9 MS. BERNER: Good evening. My name is Michelle  
10 Berner. Last name is spelled B, as in Boy, -e-r-n-e-r.  
11 I'm the administrator of the facility at 28th Street, as  
12 well as the 3388 Via Lido. I would like to first start  
13 with a point that Janet made, if I will, and I'll kind of  
14 go through points and let you know as I do.

15 The only two things that I was under the  
16 impression that we were missing was the 60-day -- within  
17 60-day title report, which I do know that we have not  
18 gotten to you, as well as the code analysis from the  
19 architect.

20 I spoke with the contract planner sometime last  
21 week, and he had gone through each of the different -- as  
22 far as like the zoning or the route map and the staffing,  
23 and all that. And I clarified over the phone with  
24 him -- so it was my understanding that he was clear as  
25 far as all that stuff being complete.

1           So it was my understanding that those two items  
2 were the only ones missing. If I'm incorrect, then, you  
3 know, we'd be more than happy to provide those within the  
4 certain allotted time.

5           MR. ALLEN: Do you have a copy of staff report?

6           MS. BERNER: Yes, I do.

7           MR. ALLEN: It does delineate what --

8           MS. BERNER: Yes, it does.

9           MR. ALLEN: -- staff says --

10          MS. BERNER: Yes.

11          MR. ALLEN: -- is missing?

12          MS. BERNER: Yes. And I just got this actually  
13 in the mail about two days ago. So I hadn't had time  
14 to -- I did read it, but I hadn't had time to submit that  
15 stuff, because, as I said, it was my understanding that  
16 those two things were missing.

17               And if I could comment on the code analysis  
18 part, unless you wanted to -- the code analysis -- when  
19 this ordinance was first issued back in May or in January  
20 of '08, when, in fact, we were supposed to apply by May  
21 22, '08.

22               There was some confusion as to what the code  
23 analysis actually meant and whether that was just a  
24 simple fire clearance or if it was something that  
25 actually had to be done by an outside architect.

1           At the same time also, there was litigation  
2 going on between the City and the different facilities  
3 and the Concerned Citizens of Newport Beach. So, the  
4 facility was a little unclear as to what was actually  
5 expected of them.

6           So once, in August of '08, that the facility  
7 worked with its attorneys, they were clear as to, yes, in  
8 fact, this does apply to you. And because it is a  
9 stand-alone facility, technically two separate legal  
10 residences with six or less in each, so there was some  
11 question as to whether or not this facility even needed  
12 to apply. But they did so in good faith back in May just  
13 in case they did fall into that category.

14           So with the code analysis, there is a current  
15 fire clearance. There always has been since the opening  
16 of that facility back in November of 2006. The code  
17 analysis and architect has been hired, and they have been  
18 working with an architect.

19           That does take some time, as I'm sure you're  
20 aware of. So, we'd like to ask that additional 21 days  
21 so we can get that architect and get the code analysis  
22 that is requested by the City.

23           Just so you're clear, I saw a letter in here  
24 stating that there was some fire violations or whatnot.  
25 The fire violation I have here back dated in September of

1 '08 was some very minor electrical covers in the garage.

2 Because the handyman had come out, and he had  
3 actually replaced all the covers in the garage. And he  
4 was right in the middle of doing that when this fire  
5 inspector came. So I clarified that with the fire  
6 inspector, and he came back out and gave us the cleared  
7 fire form.

8 And if I can just start to comment now back on  
9 when the Kramer Center in Newport Beach actually opened  
10 and what the business model and business plan looked like  
11 with the neighborhood taken into account when they set up  
12 the model.

13 The Kramer Center always was aware of the  
14 neighbors not wanting treatment facilities in their  
15 neighborhood. And so as trying to make sure that there  
16 was as less nuisance as possible, they set up a model  
17 where the treatment and all the other therapy from  
18 doctors, you know, things like that, would be done  
19 off-site.

20 So, therefore, there wouldn't be the continuous  
21 traffic of those therapists parking on the side, walking  
22 in and creating a nuisance. There has never been  
23 treatment provided in 28th Street as the ADP looks at  
24 treatment, which means counseling, therapy services.

25 There was a comment about the AA meetings. And

1 I don't know if you're aware of this, but AA meetings  
2 really can be one or -- two or more people that are in  
3 AA. And that is not actually considered counseling as  
4 the ADP or the State or the City should even look at it.  
5 So as far as anything ever being in violation done at  
6 that property, that has not been done so.

7 The Kramer Center has voluntarily not wanted a  
8 residential license at 28th Street for that purpose.  
9 Because if you do have a license for a residential  
10 treatment center, you have to provide treatment in the  
11 home.

12 And that's something that the Kramer Center  
13 never really wanted to do. They wanted to get the  
14 residents out of the house where -- normal life, get them  
15 up, get them out of the house, and get them to an  
16 off-site facility so that they are able to have possibly  
17 a higher success rate once they get home.

18 So just to be clear, there's no treatment done  
19 at that house. There's no doctors, no therapists, no  
20 counselors, no nothing. There's no -- none of that  
21 consistent traffic that you might have with your regular  
22 licensed residential treatment facility.

23 I would also like to clarify that I do know a  
24 lot of the complaints from the neighbors have been the  
25 bike traffic, the foot traffic, the cars, the visitors,

1 the deliveries, the trash, and things like that.

2 I'd like to be clear on the fact that no mail  
3 is received there to any clients. All that mail is  
4 delivered to the 3388 Via Lido building, so there's no  
5 FedEx deliveries constantly. UPS delivers nothing like  
6 that. That's all done at Via Lido as to minimize the  
7 traffic over there.

8 We don't allow residents, as with Balboa  
9 Horizons, to have cars on-site. They are not able to  
10 bring their own transportation when they are staying at  
11 the facility.

12 Visitors are not allowed there, so that, you  
13 know, minimizes any type of foot traffic that might be  
14 disruptful to the residents around the facility. As I  
15 said, there's no bikes provided for the residents.

16 So their basic needs of transportation is  
17 Monday through Friday, they are up and out of the house  
18 by about 8:45, 9 o'clock. And they are transported in  
19 a company vehicle over to the Via Lido building. And  
20 they are gone pretty much for the duration of the day,  
21 minus possibly going back to the house to eat lunch.

22 There are no large deliveries as far as food or  
23 anything like that. There is small meals delivered about  
24 noon Monday through Friday from an off-site chef that  
25 prepares dinners. But other than that, there's really no

1 deliveries that are made that would disrupt any -- or,  
2 you know, possibly I noticed that blockage of an alley,  
3 or things like that. There's nothing like that that is  
4 at issue.

5 So that's basically the difference between the  
6 Kramer Center and also the typical residential treatment  
7 facility where you might have all the different traffic  
8 that would come in to do the therapy.

9 And other than that, I would just like to  
10 really highlight the fact that services that are provided  
11 in that facility are such of a normal housing facility.  
12 People eat, sleep. They shower. They watch TV. They do  
13 anything that a normal household would do, other than the  
14 fact that they are not, you know, a family living  
15 together.

16 So, you know, I'd really like to emphasize that  
17 there's not a lot of traffic, which I know is a big  
18 issue. There's not a lot of noise, which I know is a big  
19 issue. There's not a lot of visitors and therapists and  
20 staff that are actually on that site.

21 And I would -- I think that's pretty much all I  
22 have to say at this point. And do I get an opportunity  
23 to come back and rebut any comments?

24 MR. ALLEN: Yes.

25 MS. BERNER: Okay.

1 MR. ALLEN: That's the way we've set this up  
2 so that --

3 MS. BERNER: Okay.

4 THE COURT: -- after the public gives their  
5 comments, then you have the right to come back up and  
6 rebut, as you say.

7 Does staff have any questions of Applicant at  
8 this point or concerns?

9 MR. KIFF: I did, Mr. Allen.

10 Ms. Berner, on the site there at 29th Street,  
11 who supervises the clients?

12 MS. BERNER: There is a house manager that is  
13 there Monday through Friday from about 8 a.m. to 9 p.m.,  
14 and then there are two other staff workers that are there  
15 from -- between the hours of 1 to 9, and then there's an  
16 overnight staff there between the hours of 9 p.m. and 9  
17 a.m.

18 MR. KIFF: Does the one overnight staff  
19 supervise both the Unit A and Unit B?

20 MS. BERNER: That's correct.

21 MR. KIFF: And then secondly, how do folks come  
22 into the Kramer Center? What is their -- I imagine they  
23 are coming out of a detoxification program? Is this more  
24 their residential stage?

25 MS. BERNER: It really varies from client to

1 client, as I'm sure you know. It's all the way from  
2 referrals from psychiatrists and psychologists that have  
3 had a client that comes to them and says they really want  
4 to live in a sober living environment, they want therapy,  
5 they want the counseling, drug addiction treatment  
6 facility. It can come from there.

7 It can come from a detox facility. We don't  
8 provide medical detox, as I'm sure you're aware. That's  
9 a different license environment. So it can come from any  
10 numerous locations.

11 We get referrals from Hoag, from Newport Bay  
12 Hospital, from detox facilities in Costa Mesa, Palomar,  
13 and things like that. We also get private referrals,  
14 like you said, from doctors and psychologists.

15 And we do do an assessment once they come in.  
16 And I heard that was a question earlier, as far as the  
17 doctor's diagnosis to show that these people are, in  
18 fact, disabled. We do that with every client that comes  
19 in. They get an assessment by a psychiatrist who, in  
20 fact, makes sure that this is what their issue is, their  
21 main issue is substance abuse.

22 MR. KIFF: And you do get any referrals from  
23 any government agency, whether a court system or social  
24 services or otherwise?

25 MS. BERNER: We do not, per se. However, there

1 is a lot of flexibility in the court system as far as if  
2 a facility meets certain criteria, that they are allowed  
3 to go into our facility as maybe a diversion program or  
4 something like that.

5 But that, again, is kind of free choice by the  
6 client. If they seek our facility, then we simply write  
7 the judge, or whoever is on the case, a letter stating  
8 that they are in our facility. And it's up to the  
9 judge's discretion. But per se, no, we don't get  
10 referrals from governmental agencies.

11 MR. KIFF: Do you have any operational  
12 standards that would, say, limit such referrals to  
13 persons convicted merely of a DUI rather than a  
14 possession or a violent charge?

15 MS. BERNER: The main operational requirement  
16 is that they suffer from some type of substance abuse.  
17 Whether that be -- some may have had a DUI or some  
18 possession charge or something that has, in fact, gotten  
19 them into a legal system, there are certainly other  
20 clients that have come on the request of family members  
21 for whatever reason. Their lives have been destroyed,  
22 yet, they haven't crossed over into that legal issue  
23 territory yet, and their family wants them to go  
24 somewhere first before that happens. So you can get  
25 both.

1 MR. KIFF: But would you ever accept a client,  
2 say, that was convicted of a possession or a violent  
3 crime involving drug use?

4 MS. BERNER: Possession and a violent crime are  
5 very different.

6 MR. KIFF: Understood.

7 MS. BERNER: I think possession, yes. I think  
8 violent crime would definitely be on a discretionary  
9 case-by-case basis. There is -- like I said, there's  
10 assessment by a psychiatrist that is required first to  
11 make sure that they are appropriate for the level of care  
12 that we provide.

13 So if it was, in fact, a very violent type  
14 person, maybe they wouldn't be appropriate. It would  
15 just be up to the medical doctor at that point to  
16 say -- that's familiar with our program to say,  
17 "Absolutely, they are okay," or, "No, this is not a good  
18 population for them."

19 MR. KIFF: I see. Thank you.

20 MR. ALLEN: Do you think it's clear at this  
21 point as to what staff is expecting of you to complete  
22 your application?

23 MS. BERNER: Well, looking through the staff  
24 report, there are about five things that I had believed  
25 were clarified, but now I understand they are not.

1           So I'd be more than happy, if given the  
2 adequate time, to be able to clarify that, and also the  
3 title report and code analysis.

4           Now, I would assume that the code analysis can  
5 be done within 21 days. It's something new that I have  
6 never endeavored, but being the fact that we are  
7 currently working on that, I would assume that would be  
8 done in 21 days.

9           MR. ALLEN: Okay. Anything else as between  
10 staff and Applicant?

11          MR. KIFF: No.

12          MR. ALLEN: Thank you. Thank you, then.

13          At this point, then, we'll proceed to open the  
14 public hearing, and invite the public to come up and make  
15 their feelings known with respect to this application.

16          We have the standard three-minute rule for time  
17 to make your comments. We have the lighting system in  
18 full operation, I trust. And so you'll see the light up  
19 there on the podium that will go green as you start. It  
20 will change to yellow. When you have a little time left,  
21 it will turn red. At that point, you're asked to wrap up  
22 and go.

23          Sorry. I had another comment, and I forgot.  
24 Oh, please, please, when you come up, state your name and  
25 spell the last so the Reporter gets it correct.

1           And with that, we'll commence the public  
2 hearing.

3           MR. WETHERHOLT: Good afternoon, staff and  
4 Mr. Allen. My name is Drew Wetherholt, 15-year resident  
5 of Newport Beach, W-e-t-h-e-r-h-o-l-t.

6           Mr. Allen, I'd like to bring to your attention  
7 a letter from the City Attorney's office that was  
8 presented to the Department of Drug and Alcohol. It was  
9 a letter discussing -- and I'll give you copies of this  
10 as well. It was a letter discussing the  
11 overconcentration in Newport Beach and also requesting  
12 denial of various licenses to various operators for  
13 various reasons.

14           The paragraph regarding Kramer Center I'd like  
15 to bring to your attention. In this letter, page 4, item  
16 D, it discusses an ongoing criminal investigation by the  
17 Newport Beach Police Department, as well as ADP and the  
18 DSS.

19           The letter is attached, and the following  
20 paragraph reads as follows:

21           "Item D, Kramer Center of Newport Beach.

22           Kramer Center of Newport Beach normally begins  
23 supplying residential treatment services to  
24 adolescent girls without a license from either  
25 the ADP or DSS in December of 2006.

1           Although I cannot give details of an ongoing  
2           criminal investigation before granting any  
3           license for the Kramer Center, ADP should be  
4           aware that the Newport Beach Police Department  
5           has received and is investigating complaints  
6           against this entity and some of its employees.  
7           ADP and DSS community care licenses are also  
8           investigating these allegations."

9           Clearly, this is very, very disturbing.

10          Granted, it involves adolescent girls. I made a request  
11          to the City Manager's office, Dave Kiff, as well as the  
12          Newport Beach Police Department. I'd like to know what  
13          the allegations were. I'd like to know the results of  
14          this investigation. I'd also like to know if there were  
15          any related arrests.

16               Lieutenant Harper of Newport Beach Police  
17          responded to me indicating that the City Attorney's  
18          office would respond to me. They have yet to do so. I  
19          did request that they respond to me before this hearing,  
20          and I have not heard from either MR. Kiff's office or the  
21          City of Newport Beach City Attorney's office.

22               This is, obviously, very concerning, the fact  
23          that we have an operator here that has poor supervision,  
24          we obviously have a criminal investigation, and other  
25          violations or allegations against this operator in the

1 middle of a residential neighborhood. That is very, very  
2 disturbing, especially when our children are just around  
3 the corner and down the street.

4 Clearly, I would request that there's strong  
5 grounds here for denying this conditional use permit, and  
6 I'd encourage you to do so. Here. I'd like to add these  
7 for the record. These are for you, as well as City  
8 staff, of the various e-mails that went to both parties.

9 Thank you.

10 MR. ALLEN: Anyone else?

11 MS. ROY: Good evening, Mr. Allen. My name is  
12 Barbara Roy, R-o-y. I'm a resident of Newport Beach and  
13 a property owner in the area of this group home.

14 This morning, I sat for approximately two hours  
15 and endeavored to negotiate my way through this 159-page  
16 application. Some of the pages deal with a 10-bed  
17 adolescent facility and some with a 12-bed facility for  
18 both male and female patients.

19 I saw repeatedly notifications from the  
20 Planning Department regarding an incomplete application.  
21 And even to this date, the application is not complete.

22 As residents of the peninsula, we welcome  
23 tourists and families to enjoy our area. But I'm tired  
24 of these group home operators who take advantage for  
25 profit of our neighborhood, our amenities, and our

1 beautiful beaches but do not comply with City codes and  
2 regulations in a timely manner.

3           Parking is a big problem. I noted that they  
4 have a two-car garage. Is the two-car garage actually  
5 used for parking? Because in some of these facilities,  
6 they use it for meetings and for storage.

7           I note the patients take meds twice a day. Is  
8 there a plan to have proper disposal of medical waste?

9           Fire safety is a great concern. These are  
10 narrow lots. I believe 25 feet with 3-foot side  
11 setbacks. This is a concern with the number of patients  
12 in this facility who smoke.

13           My last question was answered by Mr. Kiff. I  
14 was concerned of where the residents come from and how  
15 they get to the Kramer Center.

16           So -- and I was interested in looking at the  
17 routing. Because when I looked at the schedule, the van  
18 operator will be very busy going to all the different  
19 various activities that the people do, and I did not see  
20 that. Thank you.

21           MR. ALLEN: I don't imagine there's anything  
22 specific with respect to parking at this point, because  
23 the Applicant -- or is the application complete enough to  
24 be able to say that a condition should be imposed or not?

25           MS. BROWN: (Nods negatively.)

1           MR. ALLEN: So we'll just have to keep the  
2 parking issue open until the Applicant describes the  
3 nature of their proposal, and then staff can do their job  
4 of responding.

5           Okay. Does someone else wish to speak?

6           MR. REISS: My name is Jim Reiss, R-e-i-s-s.

7           The only thing I ask, and Mr. Kiff brought it  
8 up, has to do with the criminal behavior. I hope we  
9 recall the City standard that -- I think it has been  
10 adopted -- that no felons are allowed in the facility,  
11 and no one with any type of violent behavior will be  
12 allowed into the facility. Thank you.

13          MR. ALLEN: Thank you.

14          MR. LOPEZ: Hello. Paul Lopez, L-o-p-e-z, 1125  
15 1/2 West Balboa Boulevard.

16          This is the second hearing that I've been to  
17 in, I guess, in three days with an incomplete  
18 application. So I've taken off work as a concerned  
19 resident of Newport Beach living here eight years. This  
20 is the second one that the application is not complete.

21          And I heard the rationale why it wasn't. I  
22 heard that the other night also. And again, I would just  
23 question the interest and the respect of my time, the  
24 public's time, and your time in regards to not doing as  
25 requested.

1 I also heard, when asked about -- when Dave  
2 asked about the referrals, I thought I heard that they  
3 could be moderately violent or extremely violent. And it  
4 was up to some independent person to determine which one.  
5 So I would like to get clarification about the degree of  
6 violent folks or clients that are able to come into the  
7 facilities.

8 I also heard and unclear, are there adolescents  
9 and adults both residing at this facility?

10 And then finally, I thought that the code in  
11 this permit process basically put the onus of the owner  
12 that there would not be secondhand smoke leaving the  
13 individual property.

14 On the case before, and I'm not sure whether  
15 this would be a continuance, is that the owner will use  
16 best efforts. And I thought the law as written or as  
17 proposed was that they will not allow. It had nothing do  
18 with best efforts. Thank you.

19 MS. MCCARTHY: My name is Joan McCarthy,  
20 M-c-C-a-r-t-h-y. I live at 116 1/2 28th Street, and I'm  
21 an owner of that property.

22 And I wanted to make you aware that 28th Street  
23 is a recreational area for the City of Newport Beach.  
24 The City has in the spring and in the summer water  
25 programs conducted teaching young people to surf and that

1 sort of thing.

2 And so our neighborhood -- it means that  
3 parents are bringing their children. They need to park  
4 in the area where this residence is and walk across  
5 Balboa Boulevard to get the children up to the ocean.

6 And it seems that it is inappropriate having  
7 this in a neighborhood that has children and is for  
8 families. And it just -- I'm complaining about the  
9 application, because I don't like having it in my  
10 neighborhood. Thank you.

11 MR. ALLEN: Mr. Mathena, before your time  
12 begins to run, I see we have two written  
13 communications --

14 MR. MATHENA: Yes, sir.

15 MR. ALLEN: -- from you as well with respect to  
16 this application. Thank you.

17 MR. MATHENA: I'll try to make IT easy for you.  
18 That's Mathena, M-a-t-h-e-n-a.

19 Just a couple of points related to this  
20 particular one. Actually, I'll start out. I asked the  
21 question on Balboa Horizons, but I think it's appropriate  
22 to know.

23 I would like to know, will the public be given  
24 access to the transcripts, and if so, what the process  
25 will be? And I see Mr. Kiff writing that down, so I

1 don't necessarily need it answered right now, but I would  
2 hope to get an answer.

3 Secondly, probably the most troubling thing  
4 that I just heard is that there is apparently a criminal  
5 investigation associated with this Applicant, and it's  
6 not even mentioned in the staff report.

7 Third thing is -- and I do kind of understand  
8 the rationale that was stated relative to Balboa  
9 Horizons in terms of the incomplete application process.  
10 I guess I have two observations.

11 One, I'd like to second Mr. Lopez's comment  
12 that it is burdensome to the public. And secondly,  
13 despite that, I emphatically would state that if and when  
14 a full application is received, that the full process of  
15 review of the application, including conditions, et  
16 cetera, be given so that, in a sense, this doesn't become  
17 a procedural process to divide and conquer in a piecemeal  
18 manner, in that a full hearing slot be granted -- you  
19 know, provided for, as opposed to, you know, how Balboa  
20 Horizons has sort of -- is becoming incremental.

21 Above and beyond that, frankly, and because I  
22 don't want to waste your time, my comments, at least at  
23 the incomplete moment, are contained within writing I  
24 submitted.

25 MR. ALLEN: Do you think these two-hour

1 hearings are inadequate in length to handle these  
2 matters?

3 MR. MATHENA: You know, it's interesting. I  
4 see an evolution going on in terms of -- and, for  
5 instance, I did appreciate, I should say, the efforts of  
6 the staff and the conditions and the changes in the  
7 conditions compared to what initially was proposed for  
8 Balboa Horizons, and I'd like to thank you for taking  
9 seriously some of the comments that are presented.

10 You know, you start to getting into an  
11 attention span issue. Yes, more is better, but at the  
12 same time, I'm not sure, but --

13 MR. ALLEN: Thank you. I was just genuinely  
14 curious.

15 MR. MATHENA: But I'm more concerned about the  
16 trying to shove things in quickly to finish things up, by  
17 the way.

18 MR. ALLEN: Understand. And there's a learning  
19 process going on, as I think you people that are on the  
20 inside know.

21 MR. MATHENA: And I acknowledge that. Thank  
22 you.

23 MR. ALLEN: Thank you.

24 MS. OBERMAN: Denys Oberman, resident of  
25 Newport Beach.

1 I share the concerns that all the other people  
2 have cited. I just have a couple of quick comments. One  
3 is that I note that the Applicant in the application did  
4 not respond to the question concerning compliance with  
5 Local and State laws.

6 And I did notice that, in the staff report,  
7 there was evidence of the fact that the Kramer Center did  
8 not get a required local permit in January 16 of  
9 2007 -- there was a letter from somebody in  
10 Planning -- even though they were advised they were  
11 required to do so by the City. And it was a permit  
12 called an FEP or Federal Exception Permit. I also didn't  
13 see any evidence of the business license for the Kramer  
14 Center.

15 And then lastly, I am really confused also  
16 about exactly what this business is. The business  
17 characterizes itself as -- in one hand, 10 occupants;  
18 another, 12 occupants. Is it adult? Is it adolescents?  
19 Is it a facility that requires licensure because it  
20 provides treatment or not?

21 It would appear, based on their documentation,  
22 that they do they do provide meds, and I think that  
23 providing meds would constitute treatment.

24 So I think two hours is enough, and I think  
25 that it is a new process. I think that the concern is

1 that there are findings and other substance that ends up  
2 transpiring, and conclusions are made, and decisions are  
3 ratified outside the public eye. So there is a concern  
4 that there is truly a due process that provides for full  
5 public review and hearing.

6 Thank you very much.

7 MR. ALLEN: Could you just expand on that just  
8 a bit, because I want to -- I'd like to be as clear as  
9 possible on that issue.

10 It appears to me -- and I'm going to preface my  
11 comment -- that this City is making an effort much  
12 greater than I've ever seen in my years in this public  
13 process in making things available to everybody up front,  
14 and -- so -- but anyway, I'd like to hear what you meant  
15 by that comment, just so that we can be cognizant of  
16 it.

17 MS. OBERMAN: Okay. I'd be happy to respond to  
18 that. I do agree that there is considerable amount of  
19 effort that's going on, and -- as there is effort on the  
20 part of the citizenry. And I think the key is effort  
21 with the appropriate characteristics of due process.

22 What we are concerned with that we see in this  
23 hearing process thus far, and we understand it's new,  
24 that was consistent with what happened during the  
25 development of the ordinance in the administrative

1 process is that there were public hearings.

2           There was no rebuttal. There were positions  
3 taken. And then there were decisions made and findings  
4 and conclusions documented which were not consistent with  
5 what had been discussed or with what had transpired  
6 during the public hearing, and also decisions which  
7 appeared to provide absolutely no regard to the input  
8 that was provided by the public or, for that matter, by  
9 other expert representation that citizens brought in at  
10 their own personal expense.

11           So there is a concern for that, and that's  
12 something that is done offline, if you will, rather than  
13 being done within the public eye. And that's the  
14 concern.

15           Was I clear? It's late in the day.

16           MR. ALLEN: I think so.

17           MS. OBERMAN: Okay.

18           MR. ALLEN: I understand.

19           MS. OBERMAN: Okay.

20           MR. ALLEN: Thank you.

21           MS. OBERMAN: Thank you very much.

22           MR. ALLEN: Would anyone else like to enlighten  
23 us with your comments?

24           Well, as we've observed here, this is an  
25 interim opportunity for the Applicant to find out what

1 the neighborhood feels and what the City feels about the  
2 application so far.

3 The Applicant has more work to do. And unless  
4 there's anyone else that wishes to comment, we'll close  
5 the public hearing for this time, recognizing that it  
6 will be reopened at such time as the matter comes back  
7 before us.

8 Now, I know that the Applicant wanted to take a  
9 moment to address some of the issues that she may be  
10 concerned about, so please take that opportunity now.

11 MS. BERNER: I think the most important thing  
12 that needs to be clarified is the, quote, criminal  
13 investigation, which, if I were a resident, I'd certainly  
14 be concerned about that as well.

15 So I'd like to be able to clarify, number one,  
16 that there never was a criminal investigation that I was  
17 ever aware of in the facility by either Local, City or  
18 State, or anything like that.

19 There is an ordinance -- and I'd like to go and  
20 just explain the difference between treatment, as I  
21 noticed that one member of the community also said, is  
22 that there's very clear and concise guidelines in the ADP  
23 requirements as to what does constitute treatment in a  
24 residential facility. And you can take a look at that on  
25 someone's own time, if need be. But that's nothing

1 that's being provided in the house.

2 In fact, the ADP -- the facility did actually  
3 submit an application for a license. We went through the  
4 whole process. And in the end, it was the ADP's  
5 recommendation, "We could give you guys a license, but  
6 because of the way that your model is, it's not required.  
7 You're not in any violation with ADP." We never have  
8 been in any violation with ADP.

9 And so, therefore, it was basically, you know,  
10 they can't give us and tell us what to do, but it was  
11 their recommendation that based on our model, number one,  
12 it's definitely not necessary, excuse me.

13 And number two, it's just something that would  
14 hinder the way that the business is done, because there  
15 is no treatment being done in the house. So as far as  
16 with that knowledge in mind, I'd like to clarify that  
17 when you have people living in a house, such as we do  
18 now, there is not a license required.

19 Back in August of 2006, initially when this  
20 facility wanted to open, they always had that model in  
21 mind. So, therefore, there was never -- ADP was  
22 contacted back in August of '06, asking them, "This is  
23 how we want to provide business or treatment. This is  
24 how we want the business model to look. Do we need a  
25 license? Are we in violation? We are thinking that we

1 want to do adolescents."

2 They said, "You do not need an ADP license,  
3 period. No matter what."

4 So the business, knowing that, opened a  
5 facility to -- decided to target adolescent females, as  
6 there was a lot of influx of young adults that were being  
7 addicted to drugs at that point. So there was no  
8 knowledge that a license was required at that point.

9 Once the facility did realize that a totally  
10 separate agency outside of the ADP was required to have a  
11 license, which is the Department of Social Services, the  
12 facility went ahead and submitted all applications, all  
13 requirements under Department of Social Services, and  
14 was, therefore, granted a license in January of '07.

15 I'd like to point out the fact that if there  
16 were criminal investigations, if there were anything that  
17 was done fraudulently, anything of that matter, the  
18 Department of Social Services, I would imagine, would  
19 have never issued a license.

20 So, therefore, there was no criminal  
21 investigation that I was aware of. The only thing was  
22 that there was misunderstanding as far as what licenses  
23 were and were not required, because ADP stated that there  
24 was no license required. So I'd like to clarify that.

25 So the questions as far as is it adolescents?

1 Is it 10 or 12? There was never a Federal Exemption  
2 Permit required for this facility. It was something that  
3 was completely voluntary in the sense that the Department  
4 of Social Services said, "If you want to serve six or  
5 more," or, I'm sorry, "seven or more, you need to get a  
6 Federal Exemption Permit." So that was contemplated by  
7 the facility. That fact is that it was never required.

8 So the questions as far as the facility not  
9 being in accordance with the FEP for 10 or more, that was  
10 just in contemplation. And the reason that it came up as  
11 part of the staff report was because it was  
12 correspondence. However, I just want to point out that  
13 it was something that was not ever required, and that was  
14 something that was not ever in violation of any State or  
15 Local law.

16 Once the facility got into compliance in  
17 January of '07, the facility has not been out of  
18 compliance at all, not with ADP, not with Social  
19 Services, not with the State, not with Local laws.

20 The only thing, as staff had pointed out, is  
21 that there was a couple of small violations in the garage  
22 for the fire clearance, which was changed and since has  
23 been cleared. So I'd like to clarify that as far as the  
24 criminal investigation goes.

25 And then moving on to the question as far as

1 criminal behavior, when I stated that -- whether or not  
2 we accept violent or non-violent felons, and so forth, I  
3 think that's a very hard thing to say as far as, are you  
4 looking at felons that have -- or are you looking at  
5 people that have had violent behavior 10-plus years ago?  
6 Are you looking at somebody that's seeking treatment with  
7 violent behavior?

8 I don't think that's a very clear question.  
9 I'd be more that happy to answer that if it's made in a  
10 more clear manner as far as what you're looking for. But  
11 do we -- do we house people who are violent offenders?  
12 No, not -- I mean, as far as we know, we are not going to  
13 house somebody that is, I mean, a murderer or -- I don't  
14 know what they are really looking for.

15 But as far as violent behaviors, I haven't  
16 known any residents of that facility who are violent, and  
17 we haven't had the police out there for violent  
18 interactions or anything like that.

19 And I'd also like to comment on the secondhand  
20 smoke issue, which I think is a very hard issue for  
21 Applicants to state in good faith that that's something  
22 that can absolutely be done.

23 I agree with Balboa Horizons that best efforts  
24 are done as far as whether or not secondhand smoke can be  
25 detected outside of the property. I think it's a very

1 hard thing to measure, and it's a very gray area as far  
2 as what the Applicants are held to, but that's the  
3 standard.

4 And Kramer Center does have a current business  
5 license and has had a current business license since  
6 2006. And I think that's all the questions that I'd like  
7 to address.

8 MR. ALLEN: Are you clear now on what -- on  
9 what your application is going to contain with respect to  
10 the nature and identity of the clients that you are  
11 proposing to serve?

12 MS. BERNER: As far as what's in the staff  
13 report, that's -- yes, I am.

14 MR. ALLEN: Okay.

15 MR. KIFF: So just for the record so that staff  
16 is clear, these are adults. Could be men or women; is  
17 that correct?

18 MS. BERNER: That's correct.

19 MR. KIFF: I did have a couple of follow-up  
20 questions based on what Ms. Berner said.

21 Ms. Berner, it would be City's assertion that  
22 you did have to require -- apply for an FEP, Federal  
23 Exemption Permit. This was a City process that would  
24 have nothing to do with DSS or ADP. We did make that  
25 request of you. And I don't know if you ever responded.

1 We have no record of your responding to, indeed, apply  
2 for an FEP.

3 So just to back up a tiny bit. Again, this was  
4 something that the City devised itself for group  
5 residential uses of seven or more people that would, in  
6 effect, clarify that you're serving persons who are  
7 disabled, and, therefore, you would have, potentially,  
8 the opportunity to be excepted from other local  
9 ordinances and allowed to stay under certain conditions.

10 And that was something that -- either -- we did  
11 address it to you at that time, you, personally,  
12 but -- and it's the City's assertion that you should have  
13 applied for that.

14 MS. BERNER: I would respectfully sort of  
15 disagree with that in a sense that this property, since  
16 it was purchased back in '06, was looked at as two  
17 separate legal residences, 207-A and 207-B 28th Street,  
18 which, in effect, are six or less.

19 So I know that I had gone back and forth with  
20 the City as far as when we first got the use or zoning  
21 permit, or whatnot, stating that you are in compliance,  
22 and you are six or less. Because 207-A, which is the  
23 upstairs unit, is six or less, and 207-B, downstairs, is  
24 also six or less. So that was the understanding of the  
25 company as to what the zoning map was for 28th Street.

1           So the only -- it was our understanding that  
2 the only reason that an FEP was requested was if we were  
3 going to get a license for seven or more, which was never  
4 requested by the facility.

5           MR. KIFF: Unless my records are incorrect, we  
6 had -- your information to ADP was that you were applying  
7 for one facility for 10 residents, therefore, to us,  
8 that's a signal that you need an FEP.

9           MS. BERNER: No. That was actually amended  
10 back in the beginning of '07. It was initially 10, but  
11 when he found out that if we were going to do seven or  
12 more, then, in fact, we would have to apply for an FEP,  
13 that's when we decided to apply for a residential permit  
14 for six or less.

15           MR. KIFF: I understand that. I appreciate the  
16 fact that you've said that, but -- because that's the  
17 problem that the City has had, and any city up and down  
18 the State have had, is that people have attempted to use  
19 a loophole in the State law, basically, and get around  
20 local regulations by -- and unfortunately, ADP can be a  
21 willing partner in that to -- when you do require -- when  
22 they do require licensure.

23           And again, it's still in the City's assertion  
24 that you were operating a facility with seven or more  
25 people and should have had an FEP. And I guess we'll

1 agree to disagree on that.

2 MS. BERNER: Okay.

3 MR. KIFF: I had a couple other questions, if  
4 you don't mind it?

5 MS. BERNER: Sure.

6 MR. KIFF: I want to make sure the staff report  
7 is correct. I'm going to read you a section of the staff  
8 report, and this from our City Attorney's office.

9 "Both state licensing agencies, DSS and ADP" --

10 MS. BERNER: I'm sorry. What page?

11 MR. KIFF: I'm sorry. This is on page 4,  
12 bottom paragraph.

13 -- "issued fines and administrative citations  
14 to the Kramer Center for violations of State law related  
15 to operating unlicensed and advertising as a licensed  
16 facility."

17 Do I not -- do we not have that correct?

18 MS. BERNER: We were not fined for advertising  
19 as a licensed facility. What we were fined for, is what  
20 I explained earlier, is that the facility was not under  
21 the understanding -- since ADP stated, "You don't need a  
22 license if you're not providing treatment in the house,"  
23 the facility was not aware that you had to have a license  
24 from the Department of Social Services to house people 18  
25 and under. That was a discrepancy.

1           So you are correct in a sense that the DSS did  
2     issue fines. It was because of the lack of licensure at  
3     that point; however, the facility worked with the  
4     Department of Social Services to get into compliance with  
5     their requirements. All those fines and requirements  
6     were met by the facility.

7           MR. KIFF: So ADP did not fine you, but DSS  
8     did?

9           MS. BERNER: That's correct.

10          MR. KIFF: And then on the top of page 5, we  
11     make the statement that, "In May of 2007, the Kramer  
12     Center surrendered its DSS license and opted to serve an  
13     adult population."

14          Were you asked to surrender this?

15          MS. BERNER: No. Just so we're clear, the  
16     Department of Social Services has within its right to  
17     revoke a license, suspend a license, or whatnot. We were  
18     not asked to do that by the Department of Social  
19     Services.

20          It was something that with the market, as far  
21     as finding adequate staffing, and things that  
22     are -- that's why there's not a lot of residential  
23     treatment facilities. It's very difficult to find  
24     staffing that are appropriate for such a model. So the  
25     company decided that, at that point, to serve the adult

1 population.

2 MR. KIFF: That was the end of my questions for  
3 Ms. Berner. I did have a couple of clarifying comments  
4 that may help the folks in the audience who have some  
5 questions, but -- let me go through those, then.

6 MR. ALLEN: Yeah, I think that would be  
7 appropriate --

8 MR. KIFF: Okay.

9 MR. ALLEN: -- to go through those then, and  
10 then we need to address the time to which to continue  
11 this matter.

12 MR. KIFF: Okay. Ms. Roy brought up a couple  
13 of issues about medical waste, fire safety, parking and  
14 garages. If, indeed, a use permit were issued, the  
15 garage would have to be clear, just like any resident  
16 would have to clear the garage.

17 They would have to provide a medical waste  
18 plan. I don't believe one had been submitted, but if it  
19 is, it is a requirement of the use permit.

20 As to fire safety, this is a facility that  
21 received a clearance -- it's attached in your  
22 packet -- that dates back a few years. It was a  
23 clearance for a different type of facility. It was a  
24 facility for treating persons who were adolescents.

25 Further, there was no license issued by ADP

1 based on that facility -- based on that clearance. It  
2 will be the City's assertion that Kramer Center does have  
3 to do the code analysis as Ms. Berner is -- does have  
4 underway.

5 And then we would respond to that code analysis  
6 outside of the use permit process. We had a fairly  
7 detailed discussion about this last time and could get  
8 into it again if anybody wanted to, but most folks  
9 probably would not want to.

10 Secondly, we would be expected to bring forth a  
11 similar condition for your consideration relating to  
12 parolees and probationers as we incorporated into Balboa  
13 Horizons' proposal. I'm just going down my list here,  
14 excuse me.

15 Mr. MATHENA talked about the public's ability  
16 to see the transcript. Those are public records. We'll  
17 make those available.

18 He also raised an issue that I think you  
19 addressed well, but I can clarify some of the staff's own  
20 concerns about piecemealing information. I think that is  
21 one of the reasons you're intending to continue this is  
22 to provide more information further in advance.

23 And we, as a staff, are committed to doing that  
24 with you. Because we think that's a fair thing to do to,  
25 to allow people ample opportunity to read the documents

1 in as close to the final form as we can get that  
2 before -- hopefully at least 72 hours in advance of the  
3 hearing, if not longer.

4 And then I think those were the majority of the  
5 comments that I had to make. Thanks.

6 MR. ALLEN: Okay. Anything else now from  
7 Applicant? Do you have anything more that you need to  
8 say at this point?

9 MS. BERNER: I would just like to clarify the  
10 piecemealing, too, is that it's been a learning process  
11 for everybody that this point. I think that facilities  
12 that have submitted applications have, in good faith,  
13 attempted to comply with City laws and City regulations  
14 and City ordinances.

15 I think at times, and speaking with other  
16 facilities as well, when we have asked for clarification  
17 and stuff, it's been given to best attempts. But I think  
18 sometimes there's not even a black-and-white answer on  
19 the City side. So I think it has put the facilities in a  
20 precarious situation as to what is exactly required of  
21 them to do to be in compliance.

22 So I think that is a reason, you know. Had  
23 this ordinance been in effect five, six, seven, eight,  
24 nine, ten years, I think it would be a lot easier,  
25 because you could, as a facility, look at other

1 applications as to what was required for them, attend  
2 other hearings to see what was required, and so on, and  
3 so forth.

4 And I know in our case, that would have been  
5 something that the facility would have done and would, in  
6 effect, do. But I think that's part of the reason why,  
7 if there's any justification, is that sometimes it's just  
8 not black and white. It's a learning process. I'd like  
9 to clarify that, too.

10 MR. ALLEN: Okay. So we have a deadline  
11 looming out in February with respect to your operation.  
12 And the question, therefore, becomes, what period of time  
13 do you feel you need to get information to staff to get  
14 this finalized, recognizing that there's going to be  
15 communication give-and-take?

16 MS. BERNER: I think the title report and the  
17 other things outside of the code analysis is fairly  
18 straight forward and, you know, can be done relatively  
19 quickly.

20 MR. ALLEN: I think the code analysis that  
21 Mr. Kiff pretty much indicated that that's not a part of  
22 this permit at this point, and so it's not something that  
23 has to be in before we proceed.

24 MS. BERNER: Okay. So basically we only need,  
25 on page 7, one through six; is that correct? And the

1 code analysis is not needed to be done by the time of the  
2 next hearing?

3 MR. KIFF: Yes. It's not, yes. We do have a  
4 hearing set, as Mr. Allen knows, for Monday, the 12th of  
5 January. So potentially -- and the Applicant that's  
6 involved in that hearing pledged to get his information  
7 in by Friday.

8 So that's kind of the timing we're working on,  
9 just a couple of days, hopefully. If we can continue to  
10 meet that, to us, it's safe to meet that middle week in  
11 January to allow enough time before the abatement  
12 deadline.

13 So does it seem reasonable that you could get  
14 the remaining information in, say, either by Friday or  
15 the Monday or Tuesday of next week?

16 MS. BERNER: Unfortunately, Friday will not be  
17 reasonable for me as I've had two vacation days I've  
18 planned for about a year now. So, I would request -- I  
19 could get it done in a couple days -- maybe a week from  
20 today would be reasonable?

21 MR. KIFF: Does that give you enough time to  
22 prepare for a hearing? We're looking behind us at the  
23 calendar. That's why we always turn that way.

24 As Janet's looking, I would advise you, indeed,  
25 to complete the code analysis. As Mr. Allen stated, it's

1 not a requirement of the use permit, but it will be  
2 something that's important to you to comply potentially  
3 with one of the conditions.

4 MS. BERNER: Right.

5 MS. BROWN: I think it would be more reasonable  
6 the week of the 19th.

7 MR. KIFF: So potentially setting a hearing,  
8 depending on your schedule, the week of the 19th. That  
9 way, Ms. Berner could turn in her information by December  
10 17th, a week from today. Okay?

11 MR. ALLEN: Yes. That's will work for me.

12 MR. KIFF: Potentially, then, tentatively, we  
13 could set -- the 19th as a holiday.

14 MR. ALLEN: Is the 22nd a Planning Commission,  
15 then?

16 MR. KIFF: Planning Commission, but we would be  
17 able to have the room between 4 and 6. Do you want to  
18 schedule that?

19 MR. ALLEN: (Nods affirmatively.)

20 MR. KIFF: Okay. Would the Applicant be able  
21 to be present on the 22nd?

22 MS. BERNER: Yes. So these, to clarify, are to  
23 be returned in the Planning Department; correct?

24 MR. KIFF: That's correct.

25 So that would be 4 o'clock in this location on

1 January 22nd for the continuation of the Kramer Center.

2 MR. ALLEN: Yes. And so, therefore, the matter  
3 will be continued to that date and time, and we encourage  
4 you to get your information in timely so that work can be  
5 completed.

6 MS. BERNER: Okay.

7 MR. ALLEN: All right. Anything else?

8 MR. KIFF: Nope.

9 MR. ALLEN: Thank you. And we'll end the  
10 proceedings for this evening.

11 (Ending time: 5:50 p.m.)  
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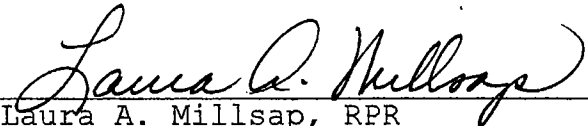
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2  
3 I, the undersigned, a Certified Shorthand  
4 Reporter for the State of California, do hereby certify:

5 That prior foregoing proceedings were taken  
6 before me at the time and place herein set forth; that  
7 any witnesses in the foregoing proceedings, prior to  
8 testifying, were placed under oath; that a verbatim  
9 record of the proceedings was made by me using machine  
10 shorthand which was thereafter transcribed under my  
11 direction; further, that the foregoing is an accurate  
12 transcription thereof.

13 I further certify that I am neither financially  
14 interested in the action nor a relative or employee of  
15 any attorney of any of the parties.

16 IN WITNESS WHEREOF, I have this date subscribed  
17 my name.

18  
19 Dated: DEC 30 2008

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22 Laura A. Millsap, RPR  
23 CSR No. 9266  
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